

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of The  
King v. Irvine A. Lovitt and others, from  
the Supreme Court of Canada, delivered the  
2nd November 1911.*

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PRESENT AT THE HEARING:

VISCOUNT HALDANE.

LORD MACNAGHTEN.

LORD SHAW.

LORD ROBSON.

[DELIVERED BY LORD ROBSON.]

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This is an Appeal from a Judgment of the Supreme Court of Canada reversing a Judgment of the Supreme Court of New Brunswick. The question at issue is whether the Defendants, who are the executors of the will of George H. Lovitt deceased, are liable to pay succession duty in respect of money which the testator had placed on special deposit in the St. John's (New Brunswick) Branch of the Bank of British North America.

The testator in his lifetime resided at Yarmouth in the Province of Nova Scotia and was domiciled in that province. He died on the 14th November 1900, being possessed of receipts for two sums, making together the sum of \$90,351, deposited by him with the said branch bank. It is sufficient to set forth one of the receipts, which are identical in terms except as to amount.

"No. 2112.

"Deposit receipt.

"Incorporated. Bank of British North  
America. Royal Charter.

"St. John, N. B.,

"30th December 1898.

"Received from George H. Lovitt the sum of  
"three thousand five hundred and seventy-five  
"dollars, and 83·100 dollars, which amount will  
"be accounted for by the Bank of British North  
"America on the surrender of this receipt, and  
"will bear interest until further notice at the  
"rate of three per cent. per annum. Fifteen  
"days' notice to be given of its withdrawal, and  
"no interest to be paid unless the money remains  
"in the bank three months.

"For the Bank of British North America,

"H. A. Harvey,

"Manager.

"\$ 3,575. 83, Entd. O. H. Sharp,

"Accountant.

"Not transferable."

The head office of the Bank of British North America is in London, and Mr. Harvey who signed the receipts on behalf of the Bank was manager of the St. John's branch wherein the money was in fact deposited. On the testator's death the Defendants gave the stipulated notice of withdrawal to the St. John's branch, but the manager refused to pay the money unless and until they took out ancillary probate in New Brunswick. This they did, and thereupon the manager of the St. John's branch paid the sums claimed.

By Section 92 of the British North America Act, 1867, exclusive power is given to the Legislature of each province to make laws in relation to direct taxation within the province in order to raise revenue for provincial purposes.

The Plaintiff's claim for succession duty is founded mainly on Section 5, Sub-section 1, of the Succession Duty Act of New Brunswick, 1896, which enacts that "all property, whether situate  
 " in this province or elsewhere, other than pro-  
 " perty being in the United Kingdom of Great  
 " Britain and Ireland, and subject to duty,  
 " whether the deceased person owning or entitled  
 " thereto had a fixed place of abode in or without  
 " this province at the time of his death, passing  
 " either by will or intestacy"—here follow words dealing with property voluntarily transferred for the purpose of evading succession duty—  
 " shall be subject to a succession duty to be paid  
 " for the use of the province over and above the  
 " fees provided by the chapter of these con-  
 " solidated statutes relating to Probate Courts,"  
 and then follow provisions fixing the amount of the duty according to the aggregate value of the property and the relationship of the successors to the deceased.

On this Statute being passed a question arose as to whether a provision in such wide terms as those set forth in Section 5, Sub-section 1, was within the constitutional powers of the province, and so in 1897 the Legislature of New Brunswick added Sub-section 2 to Section 5, which at the time of the testator's death stood as follows :—

"The provisions of this section are not intended  
 " to apply and shall not apply to property outside  
 " this province owned at the time of his death by  
 " a person not then having a place of residence  
 " within the province, except so much thereof as  
 " may be devised or transferred to a person or  
 " persons residing within the province."

In the Consolidated Statutes for 1908 this sub-section appears as amended by the word "domiciled" being substituted for the words "having a place of residence."

By Section 2, Sub-section 1, of the Act the word "property" is declared to include "real  
" and personal property of every description, and  
" every estate or interest therein capable of being  
" devised or bequeathed by will, or of passing  
" on the death of the owner to his heirs or  
" personal representatives."

Broadly stated, Section 5 (Sub-sections 1 and 2) seeks to bring within the scope of succession duty--

(a) All property situate within the province whether the deceased was domiciled there or not ;

(b) All property outside the province belonging to persons domiciled therein ; and

(c) Even all property outside the province belonging to persons not domiciled therein, if such property be devised to a person resident therein.

We are here concerned only with (a), that is to say, the case of property said to be within the province, belonging to a person domiciled outside.

The actual *situs* of the property is therefore the first question to be determined.

The property consisted of simple contract debts, and as such could have no local situation other than the residence of the debtor where the assets to satisfy them would presumably be (per Lord Field in *Commissioner of Stamps v. Hope*, 1891, A.C. 476.) The Plaintiff's contention was that on the facts of this case, the proper place for the recovery and enforcement of the debts in question was St. John's New Brunswick. The Defendants, on the other hand, contend that the testator deposited his money generally in the Bank of British North America, wherever situate, and that it was repayable, certainly in London where the Bank had its head-quarters, and probably even at any of its branches.

According to the Defendant's contention the Bank in London might be called on at any time by a person of whom it would probably know nothing, and with only a very limited time in which to obtain the detailed information that would be necessary from the St. John's branch, to pay \$90,351 in London without any deduction for cost of transmission or any agreement as to the rate of exchange. No such obligation appears by express words or necessary implication in the contract of the parties, and it is very improbable that it was ever contemplated or intended by them. It is true that the money was to be "accounted for by the Bank of British North America," but when the circumstances are considered it is seen that those words mean only that the bank is to account for the money as being money payable by them or their agents at St. John's. Thus, if the Manager of the St. John's branch refused payment, or if the branch itself were closed, the Bank in London would, of course, be liable as a principal, but that fact does not affect the locality of the debt as originally fixed by the parties.

Although branch banks are agencies of one principal firm, it is well settled that for certain special purposes of banking business they may be regarded as distinct trading bodies. Thus, it was held in *Woodland v. Fear* (7 E. and B. 519), that the obligation of a bank to pay the cheques of a customer rested primarily on the branch at which he kept his account, and that the bank in that case had rightfully refused to cash the cheque at another branch. Commenting on that decision, Sir Montague Smith, in delivering the Judgment of their Lordships' Board in *Prince v. Oriental Bank Corporation* (3 A.C. Pt. 1, 325), points out that it would be difficult for a bank to carry on its business by means of branches on any other footing, because the officials at one branch

do not know the state of a man's account at another branch.

Similarly (as Lord Campbell points out in *Woodland v. Fear*) the case of *Clode v. Bayley* (12 M. and W. 51), shows that different branches of the same establishment may be indorsers from one to the other, and that, in case of dishonour, notice need not be given direct to the principal establishment, but that each branch in succession is entitled to notice.

In each of these cases the Courts, having regard to the necessary course of business between the parties, held that the bank had in some measure localised its obligation to its customer or creditor, so as to confine it, primarily at all events, to a particular branch. The present case comes well within the principles thus laid down, and their Lordships are of opinion that these debts were "property situate within "the province" of New Brunswick.

The Defendants, however, contend that the situation of the property is to be determined, not by its actual locality, but according to the principle expressed in the maxim "*Mobilia sequuntur personam*." Personal property of a movable nature is considered, they say, to follow the person of the owner and is, in contemplation of law, situate wherever he is domiciled. In this view the property was neither in London nor New Brunswick but in Nova Scotia.

It is necessary, therefore, to examine somewhat closely the sense in which movables are said to "follow the owner." It cannot mean that for all purposes the actual situation of the property of a deceased owner is to be ignored and regard had only to the testator's domicile, for executors find themselves obliged in order to get the property at all to take out ancillary probate according to the locality where such property is properly recoverable, and no legal

fiction as to its "following the owner" so as to be theoretically situate elsewhere, will avail them. The case of legacy and succession duties however, has been placed by our law on a different footing.

In construing the Statutes relating to those duties, our Courts have laid it down that the very general terms in which they are expressed must receive some limitation. Their language is wide enough to include all property and every person everywhere, whether subjects of this Kingdom or not, and no matter where they are domiciled. It has accordingly been held, through a long series of cases, that the duties are intended to be imposed only on those who become entitled by virtue of our law. The effect of this principle is to exempt from the payment of legacy or succession duties, movable property situate here which belonged to a testator domiciled abroad, for in dealing with the distribution of such property our Courts act not on our own law, but on the law of the domicile of the testator or intestate on which the legatee or successor founds his title. Similarly, in the case of movables situate abroad which belonged to a person domiciled here, our Courts will direct their distribution according to our law and not that of the locality where they are found. In *Blackwood v. Reg.* (8 A.C. 93), Sir Arthur Hobhouse, in delivering the Judgment of their Lordships' Board says, "For the purpose of succession and enjoyment, the law of the domicile governs the foreign personal assets. For the purpose of legal representation of collection and of administration as distinguished from distribution among the successors they are governed not by the law of the owner's domicile but by the law of their own locality."

When, therefore, it is said that "*Mobilia sequuntur personam*" all that is meant is that

for certain limited purposes we deal with "*Mobilia*" (or leave them to be dealt with) under the law governing their owner as though they were situate in his country instead of ours, and, in return, foreign countries generally do the like with regard to English movables situate abroad.

The principle or practice thus defined is considered just and expedient as between nations, and our Courts give it full effect in the construction of taxing Statutes both English and Colonial, but its application may be excluded by the use of apt and clear words in a Statute for the purpose. The question now to be determined is whether that has been done in the present case by a Legislature having full authority in that behalf.

The same point, on substantially the same provision, came up for consideration by their Lordships' Board in the case of *Harding v. Commissioners of Stamps for Queensland* (1898, A. C. 769). In that case it was held that Section 4 of the Queensland Succession Duty Act, 1892 (which was identical with Section 2 of the English Succession Duty Act, 1853) must be read in the sense affixed to the English Act by the English tribunals, and that it did not include movables locally situate in Queensland which belonged to a testator whose domicile was in Victoria. The testator had died in 1894 when the Queensland Act of 1892 was still operative, but in 1895 that Legislature amended the Act of 1892 by declaring that upon the issue of any grant of probate succession duty was chargeable in respect of all property within Queensland though the testator might not have had his domicile there. Lord Hobhouse, in delivering the Judgment of the Board, said that if this amendment were retrospective it would be conclusive in favour of the Commissioners who were



claiming the duty. This weighty opinion is precisely in point as regards the present case. Here the Legislature of New Brunswick has expressly enacted that all property situate in the province shall be subject to a succession duty though the testator may have had his fixed place of abode or domicile outside the province. The Act purports to exclude the application of the maxim "*Mobilia sequuntur personam*" as regards personal estate within the province belonging to persons domiciled elsewhere, but to retain it as regards the property of New Brunswick citizens situate outside the province.

The Defendants next say that even assuming the physical property, out of which the tax was to be paid, be taken as situate in New Brunswick, and not at the place of the owner's domicile, yet the true subject-matter of the tax was not that property, but the succession or title which accrued to the successor under the testator's will by virtue of the law of the testator's domicile. In that view the tax was laid on something not "within the province" and so was beyond the competence of the local legislature. On the basis of this contention the local legislature might tax the actual property, viz., the money comprised in the receipts to any extent it pleased, but must not call the tax a succession duty nor regulate its amount by reference to the relationship between the testator and the successor, or it would become a tax, not on the physical property, but on a succession taking place outside the province. The Defendants, in this connexion, cited the case of *Lambe v. Manuel* (1903 A. C., p. 68.), where it was held that the taxes imposed on movable property by the Quebec Succession Duty Act, 1892, applied only to property claimed by virtue of Quebec law, and had no application to property forming part of a succession devolving under the law of Ontario. That case, however,

turned expressly on the construction of the particular Statute which was not phrased so as to qualify the application of the principle "*Mobilia sequuntur personam*." It was drawn in the general and unrestricted terms which the Courts have said must be read as subject to the limitation expressed by that principle. The case of *Harding v. Commissioners of Stamps for Queensland* was before their Lordships in that case, and was cited in their Judgment without any disapproval of the opinion there expressed that a Colonial legislature may, if so minded, impose a succession duty on property within their province though such property devolved under the law of another domicile.

Although called a succession duty, the tax here in question was laid on the corpus of the property, and the Statute made its payment a term of the grant of ancillary probate. By Section 6, the executor is required to give a bond for its due payment, and if he fails to do so the probate granted to him is cancelled. He is directed to deduct the duty before handing over the property (Section 15); to pay it forthwith to the Receiver-General of the Province (Section 17); and if a foreign executor transfers the stock of any company in the province liable to duty, on which the duty has not been paid, he is to pay it, and the company permitting such transfer shall also become liable.

These provisions show that the Act under consideration assimilates the tax to the probate duty. It is imposed as part of the price to be paid by the representatives of a deceased testator for the collection or local administration of taxable property within the province, and, in the view of their Lordships, it is intended to be a direct burden on that property, varying in amount according to the relationship of the successor to the testator.

It is obvious that such an enactment may work with unexpected effect upon creditors and others who, in the ordinary course of business have allowed their money or personal property to remain in a New Brunswick bank, or in the hands of a New Brunswick trader, without reflecting that, on their death, it would become subject to taxation of an amount so entirely disproportionate to the protection it may have received, perhaps only for a few days, from the New Brunswick law. Instead of the exemption from succession duty which the foreign recipient of personal estate ordinarily enjoys, by the comity of nations, in such cases, the duty in this case is even doubled against him. By Section 5, Sub-section 6, the duty is doubled where the money or personal property in New Brunswick belonging, say, to a Nova Scotian, "goes to any " person residing out of the province," as for instance, to its owner's relatives in Nova Scotia. And the tax is on the gross sum, though it may be money used in trade and, as such, be subject to many deductions before it can fairly be treated as net property. So far as it is net property it would be again subject to succession duty in Nova Scotia on its transfer to that province. But these are considerations rather for the New Brunswick Legislature than for the Law Courts, and though the Courts will not easily adopt a construction leading to such results, yet if the language of the Statute is explicit, effect must be given to it.

Their Lordships will therefore humbly advise His Majesty that this Appeal should be allowed, the Order of the Supreme Court of Canada set aside with costs, and the Order of the Supreme Court of New Brunswick restored.

The Respondents will pay the costs of the Appeal.

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In the Privy Council.

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THE KING

*v.*

IRVINE A. LOVITT AND OTHERS.

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DELIVERED BY LORD ROBSON.

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